

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:

SUMMIT METALS, INC.,

Debtor,

AMBROSE M. RICHARDSON, III,

Appellant,

v.

FRANCIS A. MONACO, JR., TRUSTEE *et al.*,

Appellees.

Chapter 11

Case No. 98-2870

Appeal No. 1:05-cv-876 (KAJ)

**APPELLEE RHC ACQUISITION'S RESPONSE TO MOTION FOR EXTENSION OF
TIME TO FILE APPELLANT'S OPENING BRIEF**

Appellee RHC Acquisition Inc. ("RHC"), by and through its undersigned counsel, hereby respectfully submits its *Response to Motion for Extension of Time to File Appellant's Brief* (the "Motion to Extend") in the above-captioned appeal (the "Appeal").

BACKGROUND

1. On September 19, 2005, Francis A. Monaco, Jr. Trustee ("Appellee") in the above-captioned bankruptcy case filed a motion to approve the sale of Rivco assets to RHC, and on October 12 and 18, 2005, the Bankruptcy Court held hearings on the sale motion.

2. On October 25, 2005, the Bankruptcy Court granted Appellee's sale motion and entered an order authorizing the sale of Rivco assets to RHC (the "Sale Order"). It is this Sale Order from which this appeal was taken.

3. The Appellant waited until November 3, 2005--the tenth day following entry of the Sale Order--to file its Notice of Appeal and its motion for stay pending appeal (the "Stay

Motion”). The sale of the Rivco assets closed on November 4, 2005 because the Sale Order was not stayed pending appeal. No hearing has been held on the Stay Motion although one is scheduled for February 10, 2006 before Judge Carey in the Bankruptcy Court.

4. On or about December 16, 2005, the Appellee filed a Motion to Dismiss the Appeal as Moot (the “Motion to Dismiss”). On December 19, 2005, RHC filed a joinder to the Appellee’s Motion to Dismiss. On December 30, 2005, Appellant filed its Response in Opposition to the Motion to Dismiss on January 9, 2006. Both Appellee and RHC filed appropriate replies. Briefing is complete on the Motion to Dismiss and the Motion to Dismiss is ready for this Court’s disposition.

5. On or about December 19, 2005, this Court docketed the appeal. Pursuant to Bankruptcy Rule 8009, unless the District Court excuses the filing of briefs or specifies different time limits, the Appellant is required to file a brief within 15 days after the entry of the appeal on the docket.

6. The appeal was referred to mediation with Vincent Poppiti serving as mediator. The mediator held a preliminary mediation conference on January 3, 2006, and the mediator and counsel to all parties agreed to hold mediation in abeyance until this Court decides the Motion to Dismiss.

7. On January 3, 2006, Appellant filed its Motion to Extend, asking this Court to extend the Appellant’s time to file its opening brief. Appellant contacted counsel for RHC earlier that day to request RHC’s consent to an extension, but Appellant filed the Motion to Extend that evening without waiting for RHC to respond.

8. RHC consents to the relief requested by the Appellant in its Motion to Extend. RHC concurs that all parties may save time and money by delaying briefs on the appeal until

after the Motion to Dismiss is decided. RHC believes that this Court will grant the Motion to Dismiss, thereby obviating the need for any briefing in this appeal.

WHEREFORE, RHC respectfully consents to the entry of an order granting Appellant an extension to file and serve its opening brief until February 11, 2006, or within ten (10) days after the Court renders its decision with respect to the pending Motion to Dismiss, whichever is earlier.

Dated: January 17, 2006

Respectfully submitted,
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